

Message Text

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ACTION IO-11

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UNCLAS SECTION 1 OF 2 GENEVA 1002

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TAGS: SHUM UN

SUBJ: HUMAN RIGHTS COMISSION (HRC)-STATEMENT ON OCCUPIED
TERRITORIES IN THE MIDDLE EAST BY US

1. TEXT FOLLOWS OF STATEMENT GIVEN BY US REP GARMENT ON
FEB 12. BEGIN TEXT

FOR THE PAST SEVERAL YEARS THE UNITED STATES HAS
ABSTAINED FROM PARTICIPATING IN THE DEBATE UNDER THIS ITEM
OF THE AGENDA. THE REASONS FOR OUR ABSTENTION CONTINUE, BUT
THE UNITED STATES BELIEVES THEY NOW BEAR REPETITION. THEY
BEAR REPETITION BECAUSE THERE IS CIRCULATING WITHIN THE COMMISSION
A DRAFT RESOLUTION UNDER THIS ITEM WHICH GOES BEYOND
EVEN LAST YEAR'S RESOLUTIONS IN THE LANGUAGE IT USES TO CON-
DEMN THE STATE OF ISRAEL. THE LANGUAGE IS SO INFLAMMATORY, IN
ITS TONE AND ONE-SIDED IN ITS CONTENT THAT ITS EFFECT-
PARTICULARLY AT THIS TIME-CAN ONLY BE TO ENLARGE EXISTING
POLITICAL DIFFERENCES WIHOUT PROVIDING REDRESS FOR HUMAN
RIGHTS GRIEVANCES. IN THE VIEW OF THE UNITED STATES THE
PROPOSED RESOLUTION DOES NO SERVICE TO THE ROLE OF THE HUMAN
RIGHTS COMMISSION, TO THE PROTECTION OF HUMAN RIGHTS IN ALL
THE AREAS OF THE MIDDLE EAST, OR MOST IMPORTANT, TO THE
NEGOTIATION OF A PEACEFUL SETTLEMENT IN THE MIDDLE EASTT.
LET ME BRIEFLY RECALL THE CENTRAL IDEAS UNDERLYING
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THE CREATION OF THE HUMAN RIGHTS COMMISSION--THAT IT

WOULD SERVE THE INTERNATIONAL COMMUNITY BY DEVELOPING WIDELY ACCEPTED STANDARDS FOR THE PROTECTION OF HUMAN RIGHTS, PROCEEDING THEM TO EXAMINE IMPARTIALLY ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS, AND ONLY THEN TO TAKE WHAT ACTION IS APPROPRIATE AND POSSIBLE TO HELP PROMOTE THE ENJOYMENT OF HUMAN RIGHTS. THIS DEBATE IS NOT A DEBATE ABOUT WHAT ARE WIDELY ACCEPTED STANDARDS OR WHICH STANDARDS APPLY. FOR ITS PART THE UNITED STATES SUPPORTS THE APPLICABILITY OF THE 1949 GENEVA CONVENTION TO THE ARAB TERRITORIES OCCUPIED BY ISRAEL.

THE CHALLENGE TO THE COMMISSION TODAY'S DEBATE IS TO EXAMINE IMPARTIALLY THE ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS AND TO MAKE CONSTRUCTIVE SUGGESTIONS TO FURTHER THE ENJOYMENT OF HUMAN RIGHTS IN THE AREA. WE ARE CALLED ON TO ADJUDICATE THE ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS THAT ARE BEFORE US.

WE ALL KNOW WHAT ARE THE RUDIMENTARY ELEMENTS OF AN EFFECTIVE SYSTEM OF ADJUDICATION. IT MUST BE CLEAR WHICH STANDARDS APPLY, AND THE SAME STANDARD MUST APPLY TO BOTH PARTIES. IT MUST MAKE PROVISION TO HEAR THE CLAIMS OF ALL PARTIES, AND IT MUST EVALUATE THE INFORMATION BROUGHT BEFORE IT WITH SCRUPULOUS IMPARTIALITY. IT CASTS THE BURDEN OF PROOF ON THE ACCUSER. AND IT REFUSES TO ISSUE JUDGEMENT IF THERE IS SUBSTANCE TO A CLAIM OF PREJUDICE ON THE PART OF THE TRIBUNAL, OR IF THE TRIBUNAL IS POWERLESS TO GRANT THE REMEDIES TRULY REQUIRED TO SATISFY THE UNDERLYING CLAIMS, AS ESSENTIAL AS THESE RUDIMENTARY ELEMENTS ARE FOR ANY SYSTEM OF JUSTICE, THEY APPLY WITH DOUBLE FORCE TO THE ROLE OF THIS COMMISSION. LACKING ANY POWER TO ENFORCE ITS DECISIONS, THE COMMISSION CAN RELY ONLY ON CONSENT OF THE PARTIES TO ITS MORAL AUTHORITY. NO TRIBUNAL IS MORE VULNERABLE THAN THE HUMAN RIGHTS COMMISSION TO THE DANGER OF LOSING THE FORCE OF ITS AUTHORITY, AND NO TRIBUNAL MUST BE MORE CAREFUL IN PROVIDING FOR A FAIR ADJUDICATION OF THE CLAIMS BROUGHT BEFORE IT.

WILL THIS COMMISSION MEET THESE ESSENTIAL REQUIREMENTS IN THIS CASE? THE ANSWER MAY SEEM SELF-EVIDENT TO SOME, BUT AS TRUTH IN THIS BODY IS RARELY SELF-EVIDENT, THIS THRESHOLD QUESTION REQUIRES EXAMINATION.

THIS TRIBUNAL DECIDES ISSUES BY MAJORITY VOTE. IT
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DETERMINES STANDARDS BY MAJORITY VOTE AND APPLIES THEM BY MAJORITY VOTE. ITS VULNERABILITY CAN THUS BE EXPLOITED BY MAJORITY VOTE.

THE GREATEST VULNERABILITY OF THE COMMISSION IS THAT THE MAJORITY, RATHER THAN SUSTAIN ACCEPTED RULES AND APPLY THEM IMPARTIALLY, WILL BEGIN TO APPLY THEM UNFAIRLY--AT WHICH POINT THE MAJORITY BEGINS TO DEPRIVE THE MINORITY OF ITS RIGHTS AND THIS TRIBUNAL OF ITS AUTHORITY. IN THE

SHORT RUN, THIS MAKES FOR INJUSTICE, BUT MORE IMPORTANTLY,
IN THE LONG RUN IT LEADS TO THE COLLAPSE OF THE SYSTEM.
SOONER OR LATER ALMOST EVERYONE FINDS HIMSELF IN SOME MINORITY
AND EXPERIENCES THE REALITY THAT THE SYSTEM IS NOT JUST,
IS NOT TO BE DEPENDED ON. IN THE END THE NUMBER WHO WILL
DEFEND THIS SYSTEM WILL DIMINISH. THE SYSTEM WILL DISAPPEAR
AND WITH IT WHATEVER OPPORTUNITY IT MIGHT HAVE TO PROMOTE
AND PROTECT HUMAN RIGHTS.
THE THRESHOLD QUESTION THAT WE RAISE TODAY THEREFORE
CONCERNS THE INTEGRITY OF THE PROCESS OF THE HUMAN RIGHTS
COMMISSION. WE HAVE ALREADY SEEN THE DIMINUTION IN THE CON-
FIDENCE WITH WHICH THE PROCESSES OF THE GENERAL ASSEMBLY ARE
VIEWED. THIS CHANGE HAS COME ABOUT-QUICKLY, ALMOST
PRECIPITIOUSLY-OWING TO THE BEHAVIOR OF A MAJORITY OF
NATIONS WHICH IN QUEST OF SHORT-TERM GAINS HAS SOUGHT TO
IMPOSE ITS WILL ON THE MINORITY BY MEASURES WHICH COULD
ONLY SUCCEED IF THE MINORITY ACCEPTED THEM AS LEGITIMATE,
WHICH CLEARLY THEY WILL NOT. INCONSEQUENCE THE MEASURES
FAILED, AND THE AUTHORITY OF THE ASSEMBLY DECLINED.

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ACTION IO-11

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TO SECSTATE WASHDC 8096

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UNCLAS SECTION 2 OF 2 GENEVA 1002

THE ITEM WE ARE NOW DEBATING HAS BEEN DEBATED FOR
SEVERAL YEARS. HAS THE ACTION TAKEN BY THE COMMISSION
HELPED OR HINDERED THE CAUSE OF HUMAN RIGHTS? THE EXPERIENCE
OF THE PAST ATTESTS THAT THE LACK OF EFFECTIVENESS
OF OUR EARLIER DECISIONS HAS BRANDED THESE DECISIONS WITH
THE MARK OF STERILITY. AS THE CHARACTERISTICS OF THIS

COMMISSION AND THE NATURE OF THE CASE REMAIN UNALTERED, THE REFUSAL TO EXAMINE THE REASONS FOR THIS STERILITY WILL CONDEMN US TO REPEAT THE FUTILITY OF THE PAST.

WE REALIZE THERE ARE SOME AMONG US WHO ARGUE THAT THIS COMMISSION HAS BEEN FAIR AND IMPARTIAL IN DISCUSSING THIS ITEM. BUT NOT ONE AMONG US COULD SUSTAIN THE ARGUMENT THAT THIS COMMISSION HAS THE POWER TO GRANT THE ONLY REMEDY AVAILABLE TO SATISFY THE UNDERLYING CLAIMS FOR PEACE IN THE MIDDLE EAST. ALL OF THE ALLEGED VIOLATIONS BEFORE US ARISE FUNDAMENTALLY OUT OF THE CONTINUATION OF HOSTILITIES, AND ONLY THROUGH THE PROCESS OF NEGOTIATION CAN AN END TO HOSTILITIES BE ACHIEVED. MANY GOVERNMENTS, INCLUDING THE UNITED STATES, ARE WORKING SERIOUSLY TO ESTABLISH A FRAMEWORK FOR NEGOTIATIONS LEADING TO A PEACEFUL SETTLEMENT. THERE IS NO OTHER COURSE TO FOLLOW FOR THOSE SERIOUSLY INTERESTED IN PEACE AND HUMAN RIGHTS IN THE MIDDLE EAST.

WAR IS INEVITABLY ACCOMPANIED BY HUMAN RIGHTS VIOLATIONS AND INJURY TO INNOCENT MEN, WOMEN, AND CHILDREN ON BOTH SIDES. I REPEAT ON BOTH SIDES, FOR A STATE OF WAR PRODUCING
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HUMAN RIGHTS VIOLATIONS BY ONLY ONE PARTY IS INCONCEIVABLE. THIS PRINCIPLE WAS AT THE HEART OF THE NEGATIVE VOTE CAST BY AMBASSADOR SHERER FOR THE UNITED STATES WHEN THE RESOLUTION OF THE SPECIAL POLITICAL COMMITTEE AND THE REPORT ON WHICH IT WAS BASED WAS CONSIDERED IN THE UNITED NATIONS GENERAL ASSEMBLY LAST DEC 5.

ONE-SIDED PROPAGANDA PRODUCED BY THE GENERAL ASSEMBLY OR THE HUMAN RIGHTS COMMISSION DOES NOTHING TO REDUCE GENUINE GRIEVANCES OF EITHER SIDE OR REDUCE TENSIONS IN THE AREA. OUR ACTIONS IN THE PAST HAVE SIMPLY HARDENED THE MUTUAL SENSE OF MISTRUST AND ANXIETY. THEY HAVE INTERFERED WITH EFFORTS TO NEGOTIATE THE DETAILS OF ACCEPTABLE ARRANGEMENTS FOR THE JUST AND LASTING PEACE THAT ALL THE PARTIES HAVE FORMALLY DECLARED THEY ARE PURSUING. HOW SAD THAT THIS COMMISSION HAS BEFORE IT ONCE AGAIN A DRAFT RESOLUTION SO REPETITIOUS OF INEFFECTIVE PRODUCTS OF THE PAST. THE DRAFT PRESENTS A TOTALLY ONE-SIDED VERSION OF THE FACTUAL SITUATION IN THE OCCUPIED TERRITORIES. IT CONDEMNS SOME ISRAELI POLICIES AND PRACTICES WITHOUT RELIABLE EVIDENCE. IT INVOKES THE HARSHTEST LANGUAGE OF CONTEMPORARY HISTORY BY ADJUDGING THE STATE OF ISRAEL GUILTY OF THE COMMISSION OF "WAR CRIMES/ AND "AN AFFRONT TO HUMANITY". ITS FOCUS IS ARBITRARILY LIMITED TO THE OCCUPIED TERRITORIES RATHER THAN OPENING UP FOR EXAMINATION ALL HUMAN RIGHTS VIOLATIONS RESULTING FROM HOSTILITIES IN THE MIDDLE EAST. PASSAGE OF SUCH A RESOLUTION WOULD ATTEST TO THE INABILITY OF THE COMMISSION TO MAKE A CONSTRUCTIVE CONTRIBUTION TO THE UNDERLYING PROBLEMS OF THE MIDDLE EAST AT THIS TIME. FOR IT MEANS APPLYING DIFFERENT STANDARDS TO DIFFERENT PARTIES.

IT MEANS LISTENING TO BOTH SIDES BUT FAILING TO EVALUATE OR
EVEN ACKNOWLEDGE THE EVIDENCE WITH DETACHED IMPARTIALITY.
IT MEANS CASTING THE BURDEN OF PROOF ON THE DEFENDENT AND
ISSUING JUDGEMENTS IN SPITE OF PREJUDICE AND LACK OF POWER
TO GRANT REMEDIES HELPFUL TO THE SOLUTION OF THE UNDERLYING
PROBLEM.

THE UNITED STATES IS PARTICIPATING IN THIS DEBATE TO
STATE WHAT WE SEE AS OBVIOUS TRUTHS. WE DO SO WITHOUT MUCH
HOPE OF ALTERING THE OUTCOME. AND THAT IS ONE OF THE
TRUTHS. YEAR AFTER YEAR, THE NATURE OF THE DEBATE, ITS OUT-
COME, AND LANGUAGE OF CONDEMNATION ARE REPEATED. NOTHING
CHANGES HERE; BUT HOPEFUL STEPS ARE BEING TAKEN ELSEWHERE.
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IN THE VIEW OF THE UNITED STATES THIS RITUALISTIC EXERCISE
BY THE HUMAN RIGHTS COMMISSION ONLY SERVES TO EMBITTER THE
ATTITUDES OF THOSE CONCERNED IN PURSUING A SOLUTION TO THE
UNDERLYING PROBLEM WHICH IS THE CREATION OF CONDITIONS OF
PEACE IN THE MIDDLE EAST.

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